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9:24 am, Jun 07, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

UNITED STATES OF AMERICA, . Criminal No. 13-cr-00607-JFB-AYS-1
.
Vs. . 100 Federal Plaza
. Central Islip, NY 11722
PHILLIP A. KENNER, .
TOMMY C. CONSTANTINE . DATE August 28, 2020
.

TRANSCRIPT OF VIRTUAL STATUS CONFERENCE
BEFORE HONORABLE JOSEPH F. BIANCO
UNITED STATES VISITING JUDGE

APPEARANCES:

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1 THE COURT: This is Judge Bianco, you can call the
2 case.

3 THE CLERK: Thank you, Judge. Criminal all is for a
4 status conference in 13-cr-607, the United States of America
5 against Philip Kenner and Tommy Constantine. Counsel, please
6 state your appearances, starting with the Government.

7 MR. HAGGANS: Good morning, Your Honor, this is
8 Matthew Haggans for the United States. I'm joined on the line
9 by AUSA Diane Leonardo and Madeline O'Connor. AUSA Komatireddy
10 is not able to join today and sends her regrets. I also believe
11 that on the line are Special Agents Matt Galliodo (phonetic)
12 and Josh Wayne.

13 THE COURT: Good morning to all of you.

14 THE CLERK: For Mr. Kenner.

15 MR. TALKIN: Good morning, Your Honor, Sam Talkin for
16 Tommy Constantine.

17 THE COURT: Good morning, Mr. Talkin, Mr. Constantine,
18 are you there?

19 DEFENDANT CONSTANTINE: Yes, Your Honor, I'm here.

20 DEFENDANT KENNER: Good morning, Your Honor, Mr.
21 Kenner.

22 THE COURT: Good morning, Mr. Kenner.

23 MR. BRISSENDEN: Good morning, Your Honor, Matt
24 Brissenden, standby counsel for Mr. Kenner.

25 THE COURT: Yes, good morning, Mr. Brissenden. And I

1 think even though my intention was to discuss the sentencing
2 date today, I do think we have some of the parties with respect
3 to the forfeiture. If counsel for Danske Bank on the line?

4 MR. KOSTOLAMPROS: Yes, Your Honor, this is George
5 Kostolampros of Venable, I'm here with my colleague Xochitil
6 Strohbehn as well.

7 THE COURT: All right, good morning to both of you.
8 And Mr. Souther, you're on the line as well?

9 MR. SOUTHER: Yes, Your Honor, Thomas Souther on the
10 line.

11 THE COURT: Okay. Good morning. So as I noted in the
12 electronic scheduling, my intention today is to discuss the
13 sentencing dates, although I guess if there was something with
14 respect to the forfeiture that needed to be addressed I could,
15 I'm happy to address that too. But I know the briefing is
16 ongoing.

17 With respect to the sentencing date, when I scheduled
18 this I was initially thinking at this point that I was going to
19 decouple the sentencing to Mr. Kenner and Mr. Constantine, so
20 this was to set Mr. Kenner's sentencing date in September. And
21 but I do want to discuss with you, Mr. Talkin, with regard to
22 Mr. Constantine, I noticed this week that the restriction for
23 Arizona has been lifted coming into New York. So I don't think
24 you have to quarantine for 14 days. So I wanted to discuss his
25 sentencing date as well.

1 I will note, since our last conference, Mr. Kenner, I
2 have received a series of letters from you, August 5th August
3 11th, and August 12th, relating to the various witness impact
4 statements that have been coming. And your ongoing disputes
5 with respect to their evidence and your ongoing request for a
6 Fatico Hearing with respect to the loss amount.

7 I'm denying your request for a Fatico Hearing for all
8 the reasons that I've previously stated. But obviously all of
9 your objections with regard to that are preserved for the
10 record.

11 With respect to the sentencing date, as you know I
12 had initially wanted to go forward in August. I don't think
13 there have been any in custody sentencings in this building
14 since March. But given the age of this case, I did want to go
15 forward in August. Mr. Kenner did raise his objection or
16 concern I guess, that he did not want to be quarantined for 14
17 days upon his reentry into the jail after the sentencing. But
18 Mr. Kenner, my view is, and I think I expressed this, I said I
19 would think about it more. But I was also waiting, although I
20 was going to push forward in August, absent that concern by
21 you, the courthouse now has been configured for screening of
22 people coming into the building. So the courthouse, people get
23 a temperature check, so the courthouse is accessible now to the
24 public for these types of proceedings, with additional
25 measures, which may be more comfortable.

1 So Mr. Kenner, notwithstanding, I understand
2 obviously it's not great to have to get quarantined for 14 days
3 when you return, but I believe the sentence needs to be in
4 person. The courthouse is equipped to do it. The Marshals are
5 equipped to bring you here. And that restriction, I don't
6 believe is going to change for a long time. I think for many
7 months that's going to be the policy of the NBC, and I assume
8 all the Federal Jails.

9 So you know, it's not something that's going to
10 change. So I need we need to proceed, and my intention is to
11 proceed in this September, on a date that's convenient to
12 everybody involved.

13 I don't know, Mr. Kenner, I don't know if you want to
14 say anything in response to that, I'm happy to listen to you.

15 DEFENDANT KENNER: Sure, I'm just going to make sure
16 that the Court was aware that the CDC guidelines have recently
17 stated that temperature, onsite temperature taking doesn't
18 produce any results relative to spread of COVID. And just my
19 ongoing concern is just being in the COVID death category where
20 92 percent of the COVID deaths in America have been people in
21 my age category and up. I just want to make sure the Court is
22 aware of that.

23 THE COURT: Yes, look, I understand temperature checks
24 aren't perfect. But we're doing everything that we can, it's an
25 additional measure, and my intention is to use the ceremonial

1 courtroom, which I don't think you've ever been in, but it's a
2 gigantic courtroom. Everybody will be spread out wearing
3 masks. And even Mr. Brissenden, to the extent you wanted to
4 consult with him, my understanding is that we can equip -- we
5 can give you like hand held radios or something, I don't know
6 exactly what it is. But you don't have to be whispering in
7 his ear, that you'll be able to communicate with him during the
8 proceeding by way of these, this radio equipment.

9 So you know, in the courtroom there's going to be
10 nobody near you. And everybody will be wearing masks. So you
11 know, I obviously understand there's some risk, but I think the
12 risk is you know, minimized to the greatest extent by all these
13 measures that will be taken. And I have to consider obviously
14 the need to have you sentenced. It's in your interest to get
15 sentenced too so that to the extent want to appeal you can
16 appeal. Keeping this on hold indefinitely, if I thought that
17 the situation would change in a week or two, I certainly would
18 be willing to put it off for some brief period of time, as I
19 have been. But you know, we tried to do this in March, we're
20 now in September. And I don't believe the situation is going
21 to change dramatically in the coming months in terms of the
22 measures that will need to be taken and the risks that are
23 inherent, I guess, for everybody, so --

24 DEFENDANT KENNER: If I could, Your Honor, just to
25 suggest. At NBC they have been preparing for in person legal

1 visits and family visits over the last few weeks. So I believe
2 that at least to the VOP and their actions, they suspect that
3 there are going to be some lessening of the constraints on
4 people and it must be following some version of the science
5 that the VOP has continued to suggest that is driving their
6 decisions.

7 So you know, again, Your Honor is in control of the
8 destiny of sentencing dates. If an October date perhaps gives
9 just a small percentage better chance that the conditions
10 continue to improve, I would appreciate your consideration.

11 THE COURT: I thought about that, but my concern is
12 the situation could get worse too. I could put it off to
13 October, the numbers in New York could go up. They're
14 extremely low right now. So I don't think -- you're going to
15 have to be quarantined I think when you go back to the jail
16 whether we have this in September or October. So to the extent
17 that's your concern, I don't think that's going to change.
18 Whatever they're doing with visits, I assume the visits are
19 going to be, you know, with no contact -- with glass so that, I
20 guess a different scenario than people going out to courtrooms
21 and things like that.

22 So my intention is to try to do this -- I want to
23 give you a couple -- that's why I'm having this call now, I
24 want to give you a couple of weeks to mentally prepare and to
25 do whatever else you want to prepare for the sentencing,

1 although it's obvious you've been preparing in some ways for
2 years. So I wanted to give you some leeway. But my intention
3 is to try to do this, as I said, in September, consistent with
4 everybody's schedule.

5 Before I hear from Mr. Talkin, Mr. Kenner, is there
6 anything else you want to add?

7 DEFENDANT KENNER: I would just again just request
8 this is late in September or early October as we could push if
9 it works with the Court. Thank you, Your Honor.

10 THE COURT: All right. We'll see what works for
11 everybody. So Mr. Talkin, what's your client -- is there
12 anything preventing your client from being able to go forward
13 at some point in September?

14 MR. TALKIN: I don't think so. I didn't know that
15 about Arizona. But that was the only hangup. So as long as
16 that remains the case, no.

17 The one thing that I just, there was a letter from
18 some victims or a victim. We're concerned about Tommy
19 Constantine not hearing, and the Court not hearing what they
20 had to say about him because they didn't want to come twice.
21 But we had already agreed to the accommodation that no matter
22 when, if they were on separate dates, that Mr. Constantine
23 would dial in and be able to hear and obviously the Court would
24 be able to hear what the victims had to say a Mr. Kenner's
25 sentencing so that it would be equally applicable to Mr.

1 Constantine, to the extent that they are talking about him. So
2 I think that issue is easily resolvable as far as picking
3 dates.

4 THE COURT: Yes, I'll speak to the Government about
5 that. Because again, before I saw the restriction got lifted,
6 and I think it only happened a few days ago -- or actually I
7 heard it on the radio. I didn't actually check the New York
8 State website. But I assume it's correct. If Mr. Constantine
9 has different information then he can let me know. But I was
10 thinking of potentially still separating their sentencings,
11 with that agreement with respect to him listening to the
12 victims.

13 But let me hear from the Government on terms of the
14 date and that particular issue. Mr. Haggans.

15 MR. HAGGANS: Thank you, Your Honor. So I would note,
16 I just did a quick check on the New York State website, and it
17 does appear that Arizona was removed on August 25th, so that
18 information appears accurate.

19 If Mr. Constantine is going to be present in person
20 for sentencing in any event, the Government's preference would
21 be, especially if we're in the ceremonial courtroom, where
22 social distancing measures can be maximized, the Government's
23 preference would be to conduct those proceedings at the same
24 time or in sequence, so that the victims can attend and speak
25 to the Court if they choose to speak to the Court, as to both

1 defendants.

2 THE COURT: The only additional concern I have with
3 respect to that is, you know, in this letter which I didn't
4 mention, but I did receive, and obviously I'm considering, nine
5 people I guess signed the letter. I have concern, I don't know
6 whether anyone is going to come to the sentencing on behalf of
7 Mr. Constantine and/or Mr. Kenner, you know, in person. I
8 don't know whether there's going to be some reporters there.
9 So there is some concern that if we have all the victims there,
10 and Mr. Kenner and Mr. Constantine, and Mr. Talkin, at some
11 point even in the ceremonial courtroom, it would create issues.

12 I did check, we can do a feed to another courtroom,
13 like an overflow courtroom. But that's just another thing that
14 was going through my mind. I guess I can ask Mr. Kenner or Mr.
15 Constantine, if they expect to have people who want to attend
16 in person and support of them at the sentencing. Mr. Talkin,
17 do you know does Mr. Constantine intend on having other people
18 there other than himself?

19 MR. TALKIN: He does, yes. Several, we hope. Now
20 that the, I mean we weren't aware of the travel restriction,
21 that was our biggest impediment. But yes, he does.

22 THE COURT: Mr. Kenner, do you currently expect people
23 to be in person in support of you?

24 DEFENDANT KENNER: I haven't decided Your Honor, based
25 on their safety and health issues.

1 THE COURT: Yes. So anyway, again I'm trying to weigh
2 all these things. But I don't want to get in a situation where
3 because we're doing them in tandem, you know, and I don't want
4 to tell Mr. Constantine's people, like oh we have too many
5 people in the courtroom, you have to go into the overflow room
6 during Mr. Kenner's portion. It's a lot of victims are
7 speaking. So I don't know. I have to think about that a
8 little bit, I guess.

9 But in terms of the date, does the Government have
10 any, is there any unavailability in mid to late September?

11 MR. HAGGANS: Yes, Your Honor, there are some dates
12 that we would prefer to avoid.

13 THE COURT: Okay.

14 MR. HAGGANS: And I can provide that list now.

15 THE COURT: Yes. Does this include the victims or
16 this is just the Government's dates?

17 MR. HAGGANS: This is inclusive of the victim
18 information that we have, as well as the Government counsels'
19 schedule.

20 THE COURT: All right. So these are the bad dates?

21 MR. HAGGANS: These are bad dates, yes, Your Honor.

22 THE COURT: Okay, go ahead.

23 MR. HAGGANS: So 8th and 9th of September. 14th to
24 17th September.

25 THE COURT: All right.

1 MR. HAGGANS: 22nd and 23rd September. And then the
2 week of September 28th to October 2nd, that's the last week of
3 September.

4 THE COURT: All right, give me one second. Mr. Talkin
5 --

6 MR. TALKIN: I have issues on certain dates, I'm just
7 trying to match. The other issue I have is that Brady issue is
8 still out there. I can't, I haven't received a reply or
9 response from the Government, that the Court asked for on our
10 last conference. So I don't know how you want to factor that
11 into the scheduling either.

12 THE COURT: Why don't you give your availability
13 dates, and then I'll ask Mr. Haggans about that.

14 MR. TALKIN: 21, I'm just excluding their dates as
15 well. 21 works. Week of the 28th is out. So that the week
16 before that, 21 works. 23 does not work for them.

17 THE COURT: I think -- hold on one second.

18 MR. TALKIN: That's probably a holiday that's why it
19 works. Is that why there's a hole in my calendar?

20 THE COURT: I think we need to do, if we need the
21 ceremonial courtroom, I think it has to be on a Monday or a
22 Friday.

23 MR. TALKIN: The 21 is a Monday.

24 THE COURT: Hold on one second. How about the -- let
25 me ask Mr. Haggans, how about the issue regarding the

1 additional emails. I think Ms. Komatireddy had indicated on
2 our last conference that, I had asked her to put in a letter
3 about whether or not, in light of the forensic analysis that
4 was done, whether the Government believed that that
5 conclusively established that there were some emails missing.

6 MR. HAGGANS: Yes, Your Honor. I know she had been
7 planning to address that issue. Perhaps we could set a date,
8 say two weeks from today, and we'll address it in writing by
9 that date. So that would be September 11th.

10 THE COURT: All right. Just give me one second, I'm
11 just checking my calendar. So I think what I'm going to do is,
12 essentially, I think I'm going to -- unless Mr. Constantine
13 wants to go forward, and it sounds like he prefers not to go
14 forward on the same day as Mr. Kenner, I think that's my
15 preference now as well, for the reasons I've indicated. And
16 also there's this additional submission, although I'm not sure
17 that that ultimately would be, make it untenable. But so Mr.
18 Talkin, your preference is to have Mr. Constantine on the phone
19 for Mr. Kenner's, hear the victims, and then schedule it for
20 another -- still, I still intend on doing it relatively soon,
21 maybe in October.

22 MR. TALKIN: That's fine, Your Honor. And I will
23 personally appear on the date, he'll be on the phone because of
24 traveling from Arizona.

25 THE COURT: All right, so the two dates I'm looking at

1 for Mr. Kenner as the 18th Friday the 18th, or Friday the 25th,
2 does anybody have any preference as to either -- the 18th, Rash
3 Hashanah I guess starts at sundown, but it would be in the
4 morning, like at 11 a.m.

5 MR. TALKIN: Your Honor, I apologize, but I'm not
6 available on the 25th.

7 MR. HAGGANS: The 18th works for the Government, Your
8 Honor.

9 THE COURT: So why don't we --

10 MR. TALKIN: I have to be in court at 10:30 on the
11 18th.

12 THE COURT: 10:30 where?

13 MR. TALKIN: I can go it by phone, so --

14 THE COURT: Okay, can we start it --

15 MR. TALKIN: -- city I can 00

16 THE COURT: 11 a.m. then on the 18th?

17 DEFENDANT KENNER: And Your Honor, it is Rash
18 Hashanah that evening. So I would appreciate if you would
19 consider that on my behalf.

20 THE COURT: I don't -- you'd be back to the jail, if
21 we had the sentencing at 11, you'd be back to the jail, the
22 Marshals, you're going to be the only person in the building, I
23 would think. I could double check with the Marshals, but as
24 long as you're back by sundown, that's okay, right?

25 DEFENDANT KENNER: It is. But I'm not supposed to be

1 going through any movement or activity at that point as well,
2 so.

3 THE COURT: At sundown you're talking about, right?

4 DEFENDANT KENNER: That's correct, Your Honor.

5 MR. TALKIN: Your Honor, is there any way we could
6 this on the 21st, the following Monday? I'm just worrying
7 about that court appearance going long, and I don't want to
8 hold everything up.

9 MR. HAGGANS: 21st is okay with the Government, Your
10 Honor.

11 THE COURT: It doesn't work for me.

12 MR. TALKIN: And it has to be a Friday or a Monday,
13 right?

14 THE COURT: Well I'd have to double check that. But I
15 know for certain if we do it on a Monday or a Friday --

16 MR. TALKIN: I can do it on the 17th, after 11:30, any
17 time after 11:30 on the 17th. Is that one of their bad -- oh,
18 that's one of their bad days, I apologize.

19 MR. HAGGANS: It is, sorry.

20 MR. TALKIN: I can do the 16th.

21 THE COURT: No the 14th through the -- hold on one
22 second. We're trying to make a call -- well actually hold on
23 one second.

24 (Court and Clerk confer)

25 MR. TALKIN: They said 14 through 17 is bad, I

1 apologize.

2 MR. HAGGANS: Your Honor, is the first Monday of
3 October available?

4 MR. TALKIN: Or September 28th?

5 THE COURT: October 5th.

6 MR. TALKIN: October 5th is -- it's fine for me, I'll
7 try to move something, I have a Queens appearance that I'll try
8 to move back, if that works for everybody.

9 MR. HAGGANS: That should work for the Government,
10 Your Honor.

11 THE COURT: All right, and Mr. Kenner's preference
12 anyway, to give a little more time what the situation is. So
13 All right, so we'll schedule it for October 5th at 11 a.m.

14 MR. TALKIN: Okay.

15 THE COURT: This will be for Mr. Kenner. Obviously
16 Mr. Haggans, to the extent that one or more of the victims for
17 whatever reason do not want to appear in person, I would
18 certainly allow them to speak by telephone. I do have to check
19 the ceremonial, to make sure the ceremonial courtroom can do
20 that. But we're going to go forward. If for some reason we
21 have to use a different courtroom, I'll use whatever courtroom
22 I can. But my hope is that we can use that one.

23 In advance of that date, I'd like you to let me know
24 who exactly wants to speak and whether they're going to be in
25 person or on the phone, just so I have a list.

1 MR. HAGGANS: Understood, Your Honor, we will do so.

2 THE COURT: And then you'll submit that letter on
3 September 11th for, with respect to the emails (inaudible-
4 background speaking) Someone doesn't have their phone on mute,
5 I don't know who that is. But -- I guess they don't know they
6 don't have it on mute. All right. But so then --

7 MR. TALKIN: Your Honor, if there's any response one
8 week is plenty, on the --

9 THE COURT: All right.

10 MR. TALKIN: I can't imagine it will be too lengthy so
11 that's fine. The 18th then --

12 THE COURT: So then with respect to Mr. Constantine,
13 you know, I'm willing to schedule him for later in October, you
14 want to schedule that now or --

15 MR. TALKIN: Yes, that's up to you, Your Honor, I can
16 do that.

17 MR. HAGGANS: Your Honor, the ceremonial courtroom is
18 only available Mondays and Fridays. If that's --

19 THE COURT: That's my current understanding.

20 MR. HAGGANS: If that's true, is there a possibility
21 perhaps to do it, do that proceeding in the afternoon of Monday
22 the 5th. It seems unlikely that there will be other in person
23 proceedings scheduled in the ceremonial courtroom that day.
24 Just a guess, given the frequency of in person proceedings
25 right now. And it would allow for separate proceedings, but

1 would perhaps obviate the potential overcrowding concern that
2 Your Honor noted earlier.

3 THE COURT: If Mr. Constantine would go in the
4 afternoon, you mean?

5 MR. HAGGANS: Yes, Your Honor.

6 THE COURT: That's okay with me. How do you feel about
7 that, Mr. Talkin, Mr. Constantine. In other words it wouldn't
8 be in tandem, we could do one at 11 and one at maybe 2.

9 MR. TALKIN: I guess my only concern is that, I'm just
10 trying to create as much space as possible for the people I'm
11 flying in between the COVID, you know, the more time the
12 better. But your point about it could get better or worse, we
13 don't know. I mean I probably would prefer a separate day.
14 Maybe the following Monday, the 12th.

15 MR. HAGGANS: That would be Columbus Day I believe.

16 THE COURT: How about the 19th? The 19th at 11?

17 MR. TALKIN: That's fine for me as well.

18 MR. HAGGANS: I am unfortunately scheduled to begin a
19 trial in Brooklyn that day, Your Honor. But I anticipate that
20 AUSA Komatiredy would be able to attend that day.

21 THE COURT: I could give you Friday the 16th. Is that
22 better?

23 MR. TALKIN: That's fine for me as well.

24 MR. HAGGANS: That works as of now, Your Honor.

25 THE COURT: All right, so say October 16th at 11 a.m.

1 for Mr. Constantine. And Mr. Kenner, I'm not sure I need to
2 say this, but I just want to make sure, because people are
3 going to flying in and things like that. If you -- and again
4 I've had no issues with you at all in terms of coming to court,
5 and things like that. But I just want you to be aware that if
6 you for whatever reason did not come on that date, you know,
7 refuse to come, I would issue a force order telling the
8 Marshals to bring you anyway. So you know, I hope that we
9 don't have issues like that. I've had that with other
10 defendants. But you know, you have to come.

11 Obviously if there was some issue where you were sick
12 or something like that, it would be different. But assuming
13 there are no issues like that, you know, I expect you to come,
14 notwithstanding your concerns, okay?

15 DEFENDANT KENNER: Yes, and Your Honor, I just ask
16 that, I'm assuming that's a generic statement that you would
17 make to all defendants, not something that was raised
18 unbeknownst to me about that date?

19 THE COURT: No, no, I'm just saying that because you
20 had indicated you know, that you didn't really want to come and
21 you consider it a risk. So it just occurred to me in my head,
22 and I have all these people coming in to be here. And I
23 wouldn't want a situation where victims are flying in,
24 everybody is coming in and then the Marshals tell me that you
25 refuse to come, because that would not be a good situation. So

1 nobody has raised that with me, nobody -- it just went through
2 my head based upon what we're discussing here and what you had
3 said. But again I don't expect that from you because you've
4 been very professional and compliant with all the rules and
5 procedures. So I'm just, just saying that as a general
6 precaution, okay?

7 DEFENDANT KENNER: Okay, I think that's (inaudible-
8 static) who is traveling in that day that would like to have
9 their peace said. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. HAGGANS: Your Honor, I'm sorry to interject
12 again, this is Matthew Haggans for the Government. I know Your
13 Honor is aware that the Government has previously expressed its
14 concerns about Mr. Constantine's continued release on bail.
15 The Government doesn't have any information, any new
16 information on that issue. However, on October 5th when Your
17 Honor imposes sentence upon Mr. Kenner, Mr. Constantine will
18 then have new information.

19 And so I just raise for the Court's attention whether
20 it, if the dates work either way, whether it makes sense for
21 Mr. Constantine to be sentenced first, and Mr. Kenner second,
22 if --

23 THE COURT: My intention is not to remand Mr.
24 Constantine at his sentencing. I was going to allow him to
25 surrender. So to the extent that the Government is concerned

1 was going to ask for a remand of Mr. Constantine at his
2 sentencing, that request is going to be denied. I don't
3 believe, even though Mr. Constantine is going to hear Mr.
4 Kenner's sentence, again, for all the reasons I've previously
5 stated, I don't believe Mr. Constantine, I believe the
6 circumstances have changed such that he should be remanded.
7 He's been a liberty for I don't know how many years. You know,
8 there's been no issues with respect to any concerns I have that
9 is going to flee. Were he to flee, and he would have to leave
10 the United States, he has a life -- how many children does he
11 have, Mr. Talkin?

12 MR. TALKIN: Two, Your Honor.

13 THE COURT: He has two young children. He would,
14 obviously unless they're fleeing with him, he would never be
15 able to come back into the United States to see his family. So
16 I don't view him as a flight risk such that he should be
17 remanded at his sentencing. Especially obviously given the
18 continuing bail, conditions of his bail and the forfeiture that
19 would occur where he would do so. I just, I could be wrong.
20 But I think, I don't think it's an issue. Okay?

21 MR. HAGGANS: Understood, Your Honor, thank you.

22 THE COURT: All right. Is there any other issues with
23 respect to the sentencing dates before I just see if there's
24 any other issues? All right. So is there anything else we
25 need to discuss today. And Mr. Brissenden, I'm sorry, you've

1 been very quiet. I assume those dates, that date is okay with
2 you?

3 MR. BRISSENDEN: Yes, Your Honor, I realize I'm in
4 somewhat the least important part of this puzzle, but those
5 dates are fine.

6 THE COURT: Okay. You're not the least important part.
7 You're his standby counsel, and I obviously want you to be
8 there. As I said, my understanding is that you'll have some
9 kind of device that will allow you to speak to him during the
10 sentencing, even though you'll be socially distanced. All
11 right?

12 MR. BRISSENDEN: Understood.

13 THE COURT: All right, any other issue the Government
14 wanted to raise --

15 MR. HAGGANS: The Government has nothing --

16 THE COURT: -- today.

17 MR. HAGGANS: I'm sorry, Your Honor, the Government
18 has nothing further.

19 THE COURT: All right. Do any of the parties with
20 respect to the forfeiture have any issues they need to raise
21 today?

22 MR. KOSTOLAMPROS: Your Honor, this is George
23 Kostolampros, representing Danske, we have nothing further
24 today.

25 THE COURT: All right, thanks. Mr. Souther, anything

1 from you?

2 MR. SOUTHER: This is Tom Souther, Your Honor, I don't
3 have anything to raise today, thank you.

4 THE COURT: All right. Mr. Kenner, do you have
5 anything else?

6 DEFENDANT KENNER: The only other thing I think that I
7 can think of, Your Honor, is there was still a request for an
8 evidentiary hearing with respect to the Chronic Traumatic
9 Encephalopathy discovery, that Mr. Berard (phonetic) and others
10 were part a brain damage lawsuit prior to the trial. I had
11 made some submissions on that.

12 THE COURT: Yes, I saw those. I guess I didn't
13 specify when I said I'm denying your request for a evidentiary
14 hearing. I was including that issue as well. I don't believe
15 an evidentiary issue on that is warranted either.

16 All right. Anything else, Mr. Kenner?

17 DEFENDANT KENNER: No, sir, Your Honor.

18 THE COURT: All right. Mr. Talkin?

19 MR. TALKIN: No, thank you, Your Honor.

20 THE COURT: All right, thank you very much everybody,
21 I appreciate it. Have a good day.

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C E R T I F I C A T I O N

I, **PATRICIA POOLE**, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

/S/ PATRICIA POOLE

TRACY GRIBBEN TRANSCRIPTION, LLC

DATE: June 6, 2021